

SEVENTEENTH DAY - FEBRUARY 2, 2004

LEGISLATIVE JOURNAL

NINETY-EIGHTH LEGISLATURE SECOND SESSION

SEVENTEENTH DAY

Legislative Chamber, Lincoln, Nebraska
Monday, February 2, 2004

PRAYER

The prayer was offered by Pastor Daniel Seiker, School Sisters of Christ the King, Lincoln.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senator Thompson who was excused; and Senators Beutler, Bourne, Brashear, Brown, Hartnett, Maxwell, McDonald, Dw. Pedersen, D. Pederson, Preister, Quandahl, Synowiecki, and Wehrbein who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixteenth day was approved.

STANDING COMMITTEE REPORTS Health and Human Services

LEGISLATIVE BILL 818. Placed on General File.

LEGISLATIVE BILL 944. Placed on General File.

LEGISLATIVE BILL 906. Placed on General File as amended.

(Standing Committee amendment, AM2249, is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 996. Placed on General File as amended.

Standing Committee amendment to LB 996:

AM2311

- 1 1. On page 3, line 16, strike "who acquires", show as
- 2 stricken, and insert "acquiring"; in line 17 after "that" insert
- 3 "(a)"; in line 18 strike "and shall notify", show the old matter as
- 4 stricken, and insert ", (b) designated personnel are trained in the
- 5 use of the defibrillator according to guidelines established by the

6 Department of Health and Human Services Regulation and Licensure,
 7 and (c)"; in line 19 after "service" insert "is notified"; and in
 8 line 20 after the first "defibrillator" insert "and of any change
 9 in the location of such defibrillator,", after "unless" insert "the
 10 person acquired", and strike "was acquired" and show as stricken.

LEGISLATIVE BILL 1005. Placed on General File as amended.

Standing Committee amendment to LB 1005:

AM2347

- 1 1. Strike original section 30.
- 2 2. On page 94, line 23, strike "71-409,".
- 3 3. Renumber the remaining sections and correct internal
- 4 references accordingly.

(Signed) Jim Jensen, Chairperson

Government, Military and Veterans Affairs

LEGISLATIVE BILL 1074. Placed on General File.

LEGISLATIVE BILL 1077. Placed on General File.

(Signed) DiAnna R. Schimek, Chairperson

NOTICE OF COMMITTEE HEARINGS Transportation and Telecommunications

Room 1113

| | | |
|---------|----------------------------|-----------|
| LB 838 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 859 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 865 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 1056 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 866 | Tuesday, February 10, 2004 | 1:30 p.m. |
| LB 871 | Tuesday, February 10, 2004 | 1:30 p.m. |
| LB 894 | Tuesday, February 10, 2004 | 1:30 p.m. |
| LB 1022 | Tuesday, February 10, 2004 | 1:30 p.m. |
| LB 1111 | Tuesday, February 10, 2004 | 1:30 p.m. |
| LB 1147 | Tuesday, February 10, 2004 | 1:30 p.m. |

(Signed) Tom Baker, Chairperson

MESSAGES FROM THE GOVERNOR

January 30, 2004

Patrick J. O'Donnell
 Clerk of the Legislature
 State Capitol, Room 2018
 Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 355e, 810, 811, 812, and 813 were received in my office on January 29, 2004.

These bills were signed and delivered to the Secretary of State on January 30, 2004.

Sincerely,
(Signed) Mike Johanns
Governor

January 29, 2004

President, Speaker Bromm
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Bromm and Senators:

Contingent upon your approval, the following individuals were appointed to the State Emergency Response Commission.

APPOINTEES:

*Christine Bleich, 1062 Y Street, Lincoln NE 68508

Richard Christensen, 1213 Westbridge Dr, Hastings NE 68901

*Steven Wood, 2840 Loveland Dr, Lincoln NE 68502

The aforementioned names are respectfully submitted for your consideration.

Sincerely,
(Signed) Mike Johanns
Governor

web/

*Reappointments
Enclosure

ANNOUNCEMENT

Senator Byars designates LB 841 as his priority bill.

ATTORNEY GENERAL'S OPINION

Opinion # 04002

DATE: January 29, 2004

SUBJECT: Whether Legislation Establishing an Authority Empowered to Acquire and Operate a Statewide Communication System for Public Safety Agencies, Which is Authorized to Issue Bonds to Finance the System, Impermissibly Allows the Creation of State Indebtedness in Excess of the Limit in Neb. Const. art. XIII, § 1.

REQUESTED BY: Senator Curt Bromm
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion concerning the constitutionality of LB 1176. The legislation proposes to amend the Nebraska Public Safety Wireless Communication System Act, Neb. Rev. Stat. §§ 86-401 to 86-419 (Cum. Supp. 2002) [the "Act"]. The Act, as originally enacted in 2002 by the passage of LB 1211, provides a mechanism for the establishment of a statewide public safety communication system. To establish such a system, the Act permits the creation of two separate joint entities. The first joint entity is an "acquisition agency" established pursuant to the Interlocal Cooperation Act. Neb. Rev. Stat. §§ 86-404 and 86-410(1) (Cum. Supp. 2002).¹ The "acquisition agency" is empowered "to acquire real and personal property for use in connection with such system and shall construct any facilities necessary to implement such system. . . ." Neb. Rev. Stat. § 86-410(1) (Cum. Supp. 2002). The second joint entity is an "alliance" formed under the Interlocal Cooperation Act. Neb. Rev. Stat. §§ 86-405 and 86-410(2) (Cum. Supp. 2002). The "alliance" is authorized "to operate, maintain, and manage the system." Neb. Rev. Stat. § 86-410(2) (Cum. Supp. 2002). The Act provides that the alliance is governed by an executive board consisting of no more than nine voting members. Neb. Rev. Stat. § 86-412 (Cum. Supp. 2002). Three members are "appointed by the Governor to represent the State of Nebraska, on behalf of the Department of Administrative Services, the Game and Parks Commission, and the Board of Regents of the University of Nebraska." Id. "One such member may be a director of homeland security in Nebraska." Id. The remaining members of the executive board consist of: (1) "Two members selected by the Governor in consultation with municipalities to represent participating cities and villages"; (2) "Two members selected by the Governor in consultation with counties to represent participating counties"; (3) "One member selected by the Governor in consultation with public power districts to represent participating public power districts"; and (4) "One member selected by the Governor in consultation with fire protection districts to represent participating fire protection districts." Id. The history of the Act indicates that state officials were not authorized to participate as parties to an agreement to form an acquisition agency due to concern that State participation as part of an acquisition agency could violate the limit on State indebtedness in Neb. Const. art. XIII, § 1, because an acquisition agency

was authorized to engage in debt financing through the issuance of bonds. Committee Records on LB 1211, 97th Leg., 2nd Sess. 11-13, 16-18 (February 4, 2002); Floor Debate on LB 1211, 97th Leg., 2nd Sess., 11000, 11010 (March 6, 2002).

LB 1176 proposes to alter the mechanism for establishing and operating a statewide public safety communication system by eliminating the separate "acquisition agency" and "alliance" structure enacted by LB 1211, and instead creating a single entity, the Statewide Communication Authority of Nebraska [the "Authority"], empowered to "acquire real and personal property for use in connection with the system, construct any facilities necessary to implement the system, and operate, maintain, and manage the system." LB 1176, §§ 11, 13. The Authority would be "created as a separate governmental subdivision and body corporate and politic, not a state agency, but an independent instrumentality exercising essential public functions." LB 1176, § 13. The Authority would be governed by a nine-member governing board [the "Board"] composed of the following: (1) "Three members appointed by the Governor to represent the State of Nebraska on behalf of the Department of Administrative Services, state public safety agencies, and the Board of Regents of the University of Nebraska . . ."; (2) Two members selected by the Governor in consultation with municipalities to represent participating cities and villages . . ."; (3) "Two members selected by the Governor in consultation with counties to represent participating counties . . ."; (4) "One member selected by the Governor in consultation with public power districts to represent participating public power districts . . ."; and (5) "One member selected by the Governor in consultation with fire protection districts to represent participating fire protection districts." LB 1176, § 15. Appointees currently serving on the board of the alliance established under LB 1211 [the Statewide Communications Alliance of Nebraska, or "SCAN"] "shall be designated as the initial board of the authority unless and until replaced by subsequent gubernatorial appointment." *Id.*

Section 14 of LB 1176 outlines the powers granted the Authority, including the power to: (1) "Design, acquire, construct, maintain, operate, improve, remove, and reconstruct, so long as its corporate existence continues, the system . . ."; (2) "Enter into operational service agreements with public safety agencies for use of the system . . ."; (3) "Levy a public safety communications charge upon the consumption of electricity . . ."; and (4) "Incur debt, issue bonds and notes, and provide for the rights of the holders thereof, and pledge and apply to the payment of such bonds and notes the proceeds from the public safety communications charge and other receipts, income, revenue, profits, and money of the authority. . . ." LB 1176, § 14.² The Authority may issue revenue bonds "payable exclusively from all or a portion of the revenue from service agreements with public safety agencies or from its revenue generally, including proceeds from the charge [on electrical consumers] . . .," or "general obligation bonds. . . ." LB 1176, §§ 20 and 21. As an alternative to issuing revenue or general obligation bonds "for financing public safety

communications projects, the authority may enter into a financing agreement with the Nebraska Investment Finance Authority for such purposes." Id. Section 23 of LB 1176 provides:

The bonds shall not be a debt of any political subdivision or public entity, other than the authority, or of this state, and neither this state nor any other political subdivision or public entity shall be liable thereon. Bonds shall be payable only out of any funds or properties of the authority pledged therefor. Such limitations shall be plainly stated upon the face of the bonds.

The question you have asked us to address is whether the establishment of a single, statewide authority under LB 1176, whose governing body is appointed by the Governor and includes members who are representatives of the State, and which is granted the power to issue bonds and incur debt to finance its operations, authorizes the creation of State indebtedness in excess of the limit contained in Neb. Const. art. XIII, § 1?

Art. XIII, § 1, provides, in pertinent part: "The state may, to meet casual deficits, or failure in the revenue, contract debts never to exceed in the aggregate one hundred thousand dollars, and no greater indebtedness shall be incurred. . . ." The debt limitation in art. XIII, § 1, pertains only to debts of the State or its agencies, and is not applicable to political subdivisions or public entities authorized by statute. See *Hallenbeck v. Hahn*, 2 Neb. 377, 399 (1872) (Constitutional limit on state indebtedness in predecessor to art. XIII, § 1, not applicable to counties, cities, or other political subdivisions of State), overruled on other grounds *Johnson v. Hahn*, 4 Neb. 139 (1875). On two occasions, the Nebraska Supreme Court has found that legislation authorizing State agencies to issue bonds secured by revenues generated from fees and charges collected by the agencies or their assets authorized indebtedness in excess of the limit in art. XIII, § 1. *State ex rel. Meyer v. Steen*, 183 Neb. 207, 160 N.W.2d 164 (1968); *State ex rel. Meyer v. Duxbury*, 183 Neb. 302, 160 N.W.2d 88 (1968). The Court in *Duxbury* noted the significance of the fact that the debt financing in question involved a State agency, stating: "It is important to note that the commission is an agency of the state and not a separate corporation. This results in the commission being subject to constitutional requirements and restrictions that would not be applicable to a separate corporation." 183 Neb. at 303, 160 N.W.2d at 91.

LB 1176 creates the Authority "as a separate governmental subdivision and body corporate and politic, not a state agency, but an independent instrumentality exercising essential public functions." LB 1176, § 13. As a governmental subdivision and body corporate and politic separate and apart from the State, we believe the Authority would not be subject to the debt limitation in art. XIII, § 1.

The proposed legislation further reinforces the Authority's status as a governmental instrumentality independent of the State by confirming that

the State will not be liable for any debts of the Authority, providing that any Authority bonds "shall not be a debt of any political subdivision or public entity, other than the authority, or of this state, and neither this state nor any other political subdivision or public entity shall be liable thereon . . . ," and that any bonds issued by the Authority "shall be payable only out of any funds or properties of the authority pledged therefor." LB 1176, § 23. The bill further provides that "[s]uch limitations shall be plainly stated upon the face of the bonds." *Id.*

An issue could arise as to whether the power granted the governing Board of the Authority to impose a charge on electrical consumers throughout the State supports concluding that the Authority, while denominated an independent governmental subdivision and separate body corporate and politic, is in actuality an instrumentality of the State. In view of the organizational structure of the Authority, which demonstrates it is not subject to the control or direction of State officials or agencies, and the Legislature's specific declaration that the Authority is a governmental body independent of the State, whose bonds shall not be a debt of the State, the Authority should not be considered an arm of the State subject to the debt limit in art. XIII, § 1.

Your question also demonstrates concern as to whether the Legislature may create a single governmental subdivision and body corporate and politic to carry out the purpose of establishing a statewide public safety communication system. In *Wittler v. Baumgartner*, 180 Neb. 446, 144 N.W.2d 62 (1966), the Nebraska Supreme Court held a legislative act establishing a public corporation and political subdivision comprising a "grid system" created a corporation by "special law" prohibited by Neb. Const. art. XII, § 1. The Court found the legislation was an unconstitutional attempt "to create a public corporation by a special act rather than by general law." *Id.* at 454, 144 N.W.2d at 68. This holding in *Wittler* was expressly overruled in *State ex rel. Douglas v. Nebraska Mortgage Finance Fund*, 204 Neb. 445, 283 N.W.2d 12 (1979) ["Mortgage Finance Fund"]. The Court in *Nebraska Mortgage Finance Fund* held that "[t]he Legislature may well determine that a legitimate public purpose can be accomplished by creating a single entity to handle the matter. To the extent that *Wittler* is in conflict with our decision, . . . , it is overruled." *Id.* at 456, 144 N.W.2d at 20. In light of the decision in *Mortgage Finance Fund*, it appears there is no constitutional impediment to creation of the Authority as a single independent governmental subdivision and body corporate and politic authorized to establish the statewide public safety communication system.

Another issue presented by your question involves whether granting the Governor power to appoint members of the Authority's governing Board may render the Authority a State agency or entity subject to the debt limits in art. XIII, § 1. The proposed Board includes nine members appointed by the Governor, three of which are State representatives. The other six members, while appointed by the Governor, represent various local government authorities, including counties, cities, fire protection districts,

and public power districts. LB 1176, § 15. The Board is thus not subject to control by the State or any State agency, as a majority of the Board's members are appointed to represent local government entities. This fact reinforces the notion that the Authority is not an agency or instrumentality of the State. See *New Jersey Turnpike Authority v. Parsons*, 3 N.J. 235, 69 A.2d 875 (1949) (Rejecting argument that granting Governor authority to appoint members of Turnpike Authority, statutorily deemed a "body corporate and politic," rendered the Turnpike Authority "the alter ego of the State government" subject to New Jersey state constitutional debt limit).

In sum, to the extent the Authority is deemed an independent governmental subdivision and body corporate and politic separate and apart from the State, the Authority's use of debt financing does not implicate the constitutional debt limitation in Neb. Const. art. XIII, § 1, as the limit applies only to State indebtedness.

¹ The Interlocal Cooperation Act is found at Neb. Rev. Stat. §§ 13-801 to 13-827 (1997 and Cum. Supp. 2002).

² By resolution of the Board, the Authority is empowered to levy a charge on consumers of electrical service "in an amount not to exceed fifty cents per month for each residential customer and two dollars per month for each nonresidential customer." LB 1176, § 20.

³ The Constitutional provision does provide certain exceptions to the debt limitation, none of which have any application to the question presented.

Sincerely,
JON BRUNING
Attorney General

(Signed) L. Jay Bartel
Assistant Attorney General

pc: Patrick O'Donnell
Clerk of the Legislature
07-75-21

SELECT COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 270. Placed on Select File as amended.
E & R amendment to LB 270:
AM7166

- 1 1. In the Brashear amendment, AM2019:
- 2 a. Strike section 4 and insert the following section:
- 3 "Sec. 4. Section 81-1423, Revised Statutes Supplement,
- 4 2003, is amended to read:
- 5 81-1423. The commission shall have authority to:
- 6 (1) Adopt and promulgate rules and regulations for its

- 7 organization and internal management and rules and regulations
8 governing the exercise of its powers and the fulfillment of its
9 purposes under sections 81-1415 to 81-1426;
- 10 (2) Delegate to one or more of its members such powers
11 and duties as it may deem proper;
- 12 (3) Coordinate and jointly pursue its activities with the
13 Governor's Policy Research Office;
- 14 (4) Appoint and abolish such advisory committees as may
15 be necessary for the performance of its functions and delegate
16 appropriate powers and duties to them;
- 17 (5) Plan improvements in the administration of criminal
18 justice and promote their implementation;
- 19 (6) Make or encourage studies of any aspect of the
20 administration of criminal justice;
- 21 (7) Conduct research and stimulate research by public and
22 private agencies which shall be designed to improve the
23 administration of criminal justice;
- 24 (8) Coordinate activities relating to the administration
1 of criminal justice among agencies of state and local government;
- 2 (9) Cooperate with the federal and other state
3 authorities concerning the administration of criminal justice;
- 4 (10) Accept and administer loans, grants, and donations
5 from the United States, its agencies, the State of Nebraska, its
6 agencies, and other sources, public and private, for carrying out
7 any of its functions, except that no communications equipment shall
8 be acquired and no approval for acquisition of communications
9 equipment shall be granted without receiving the written approval
10 of the ~~director of the division of communications~~ Director of
11 Communications of the Department of Administrative Services;
- 12 (11) Enter into contracts, leases, and agreements
13 necessary, convenient, or desirable for carrying out its purposes
14 and the powers granted under sections 81-1415 to 81-1426 with
15 agencies of state or local government, corporations, or persons;
- 16 (12) Acquire, hold, and dispose of personal property in
17 the exercise of its powers;
- 18 (13) Conduct random annual audits of criminal justice
19 agencies to verify the accuracy and completeness of criminal
20 history record information maintained by such agencies and to
21 determine compliance with laws and regulations dealing with the
22 dissemination, security, and privacy of criminal history
23 information;
- 24 (14) Do all things necessary to carry out its purposes
25 and for the exercise of the powers granted in sections 81-1415 to
26 81-1426, except that no activities or transfers or expenditures of
27 funds available to the ~~agency commission~~ shall be inconsistent with
1 legislative policy as reflected in substantive legislation,
2 legislative intent legislation, or appropriations legislation;
- 3 (15) Exercise budgetary and administrative control over
4 the Crime Victim's Reparations Committee, the Jail Standards Board,

5 and the Community Corrections Council;
 6 (16) Appoint and remove for cause the director of the
 7 Nebraska Law Enforcement Training Center; and
 8 (17) Do all things necessary to carry out sections
 9 81-1843 to ~~81-1848~~ 81-1850 and sections 8, 11 to 13, and 16 of this
 10 act.";
 11 b. On page 9, line 3, strike "and" and show as stricken;
 12 c. On page 12, line 9, after "to" insert "the";
 13 d. On page 13, line 11, after "agency" insert an
 14 underscored comma; and
 15 e. On page 18, line 2, strike "81-1423,"; in line 4
 16 strike the first "and"; and in line 5 before "are" insert "and
 17 section 81-1423, Revised Statutes Supplement, 2003,".
 18 2. On page 1, strike beginning with "section" in line 1
 19 through line 5 and insert "sections 81-1841, 81-1844, 81-1845,
 20 81-1848, and 81-1850, Reissue Revised Statutes of Nebraska,
 21 sections 28-112, 29-119, and 81-1849, Revised Statutes Supplement,
 22 2002, and section 81-1423, Revised Statutes Supplement, 2003; to
 23 change provisions for allegations set forth in the indictment or
 24 information; to change provisions relating to victim's rights; to
 25 harmonize provisions; and to repeal the original sections.".

Correctly Engrossed

The following bills were correctly engrossed: LBs 236, 382, 454, and 740.

(Signed) Ray Mossey, Chairperson

GENERAL FILE

LEGISLATIVE BILL 279A. Title read. Considered.

Advanced to E & R for review with 29 ayes, 0 nays, 6 present and not voting, and 14 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 172. The Chambers pending amendment, FA1438, found on page 460, to the Schimek pending amendment, AM2361, found on page 459, was renewed.

Senator Chambers moved for a call of the house. The motion prevailed with 20 ayes, 2 nays, and 27 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 22:

| | | | | |
|----------|----------|---------|--------------|----------|
| Aguilar | Combs | Janssen | McDonald | Schimek |
| Beutler | Connealy | Johnson | Pederson, D. | Wehrbein |
| Bourne | Cudaback | Kruse | Price | |
| Bromm | Hartnett | Landis | Raikes | |
| Chambers | Hudkins | Louden | Redfield | |

Voting in the negative, 0.

Present and not voting, 21:

| | | | | |
|------------|--------|----------|------------|---------|
| Baker | Erdman | Kremer | Smith | Vrtiska |
| Burling | Foley | Mines | Stuhr | |
| Byars | Friend | Mossey | Stuthman | |
| Cunningham | Jensen | Quandahl | Synowiecki | |
| Engel | Jones | Schrock | Tyson | |

Excused and not voting, 6:

| | | |
|----------|---------------|----------|
| Brashear | Maxwell | Preister |
| Brown | Pedersen, Dw. | Thompson |

The Chambers amendment lost with 22 ayes, 0 nays, 21 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following amendment to the Schimek pending amendment:

FA1439

Amend AM2361

After line 16 add:

"Information developed by the State Department of Education and approved by the State Board of Education may be used to comply with this section."

SPEAKER BROMM PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with 27 ayes, 0 nays, and 22 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 18:

| | | | | |
|---------|----------|---------|--------------|----------|
| Aguilar | Chambers | Janssen | McDonald | Schimek |
| Beutler | Connealy | Johnson | Pederson, D. | Wehrbein |
| Bourne | Cudaback | Kruse | Price | |
| Bromm | Hartnett | Landis | Raikes | |

Voting in the negative, 3:

Quandahl Redfield Smith

Present and not voting, 22:

| | | | |
|------------|---------|--------|----------------------|
| Baker | Engel | Jensen | Pedersen, Dw. Tyson |
| Burling | Erdman | Jones | Schrock Vrtiska |
| Byars | Foley | Louden | Stuhr |
| Combs | Friend | Mines | Stuthman |
| Cunningham | Hudkins | Mossey | Synowiecki |

Excused and not voting, 6:

| | | |
|----------|---------|----------|
| Brashear | Kremer | Preister |
| Brown | Maxwell | Thompson |

The Chambers amendment lost with 18 ayes, 3 nays, 22 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Pending.

STANDING COMMITTEE REPORTS

Revenue

LEGISLATIVE BILL 879. Placed on General File as amended.

Standing Committee amendment to LB 879:

AM2386

- 1 1. On page 2, lines 8 and 9, strike "permanent endowment
- 2 held by or for a tax-exempt organization" and insert "qualified
- 3 endowment".
- 4 2. On page 4, line 22, strike "contribution" and insert
- 5 "planned gift".
- 6 3. On page 3, line 15, strike "shall" and insert "may".

LEGISLATIVE BILL 973. Placed on General File as amended.

(Standing Committee amendment, AM2384, is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 1019. Placed on General File as amended.

Standing Committee amendment to LB 1019:

AM2385

- 1 1. On page 2, line 4, strike "and taxes that are
- 2 delinquent"; in lines 5 and 6 and 18 strike "or delinquent"; and in
- 3 line 17 after "under" insert "civil or criminal audit," and after
- 4 "investigation" insert a comma.
- 5 2. On page 5, line 10, strike "insurance premium tax,".

LEGISLATIVE BILL 956. Indefinitely postponed.
LEGISLATIVE BILL 970. Indefinitely postponed.
LEGISLATIVE BILL 971. Indefinitely postponed.
LEGISLATIVE BILL 972. Indefinitely postponed.
LEGISLATIVE BILL 974. Indefinitely postponed.
LEGISLATIVE BILL 1016. Indefinitely postponed.

(Signed) David Landis, Chairperson

Natural Resources

LEGISLATIVE BILL 831. Placed on General File.
LEGISLATIVE BILL 832. Placed on General File.

(Signed) Ed Schrock, Chairperson

AMENDMENT - Print in Journal

Senator Redfield filed the following amendment to LB 1047:
 AM2378

1 1. Insert the following new sections:
 2 "Section 1. Section 44-371, Reissue Revised Statutes of
 3 Nebraska, is amended to read:
 4 44-371. (1)(a) All proceeds, cash values, and benefits
 5 accruing under any annuity contract, under any policy or
 6 certificate of life insurance payable upon the death of the insured
 7 to a beneficiary other than the estate of the insured, or under any
 8 accident or health insurance policy shall be exempt from
 9 attachment, garnishment, or other legal or equitable process and
 10 from all claims of creditors of the insured and of the beneficiary
 11 if related to the insured by blood or marriage, unless a written
 12 assignment to the contrary has been obtained by the claimant.
 13 ~~(b) This subsection shall not apply to an individual's~~
 14 ~~aggregate interests greater than ten thousand dollars on all loan~~
 15 ~~values or cash values of all matured or unmatured life insurance~~
 16 ~~contracts or to all proceeds, cash values, or benefits accruing~~
 17 ~~under all annuity contracts owned by such individual.~~
 18 ~~Notwithstanding anything in this subdivision to the contrary, the~~
 19 ~~aggregate exemptions any person may claim under this subdivision~~
 20 ~~and subdivision (2)(b) of section 44-1089 shall not exceed ten~~
 21 ~~thousand dollars.~~
 22 ~~(c) No insurance company shall be liable or responsible~~
 23 ~~to any person to determine or ascertain the aggregate total of life~~
 24 ~~insurance policy or annuity contract loan values, cash values,~~
 1 ~~proceeds, or benefits for any policyholder or annuitant.~~
 2 (2) Notwithstanding subsection (1) of this section, an
 3 individual's interest in all loan values or cash values of all
 4 matured or unmatured life insurance contracts or policies and in
 5 all proceeds, cash values, or benefits accruing under all annuity

6 contracts owned by such individual shall not be exempt from
7 attachment, garnishment, or other legal or equitable process or
8 from any other claims of creditors of the insured and of the
9 beneficiary if related to the insured by blood or marriage, to the
10 extent that the loan value or cash value of any matured or
11 unmatured life insurance contract or the proceeds, cash values, or
12 benefits accruing under any annuity contract was established or
13 increased through contributions, premiums, or any other payments
14 made within three years prior to bankruptcy or within three years
15 prior to entry against the individual of a money judgment which
16 thereafter becomes final. An insurance company shall not be liable
17 or responsible to any person to determine or ascertain the
18 existence or identity of any such creditors prior to payment of any
19 such loan values, cash values, proceeds, or benefits.
20 (3) Notwithstanding subsection (1) of this section,
21 proceeds, cash values, and benefits accruing under any annuity
22 contract or under any policy or certificate of life insurance
23 payable upon the death of the insured to a beneficiary other than
24 the estate of the insured shall not be exempt from attachment,
25 garnishment, or other legal or equitable process by a judgment
26 creditor of the beneficiary if the judgment against the beneficiary
27 was based on, arose from, or was related to an act, transaction, or
1 course of conduct for which the beneficiary has been convicted by
2 any court of a crime punishable only by life imprisonment or death.
3 No insurance company shall be liable or responsible to any person
4 to determine or ascertain the existence or identity of any such
5 judgment creditor prior to payment of any such proceeds, cash
6 values, or benefits. This subsection shall apply to any judgment
7 rendered on or after January 1, 1995, irrespective of when the
8 criminal conviction is or was rendered and irrespective of whether
9 proceedings for attachment, garnishment, or other legal or
10 equitable process were pending on March 14, 1997.
11 Sec. 7. Section 44-1089, Reissue Revised Statutes of
12 Nebraska, is amended to read:
13 44-1089. (1) No noninsurance benefit, charity, relief,
14 or aid to be paid, provided, or rendered by any society shall be
15 liable to attachment, garnishment, or other process, or to be
16 seized, taken, appropriated, or applied by any legal or equitable
17 process or operation of law to pay any debt or liability of a
18 member or beneficiary, or any other person who may have a right
19 thereunder, either before or after payment by the society.
20 (2)~~(a)~~ All proceeds, cash values, and benefits accruing
21 under any annuity contract, under any policy or certificate of life
22 insurance payable upon the death of the insured to a beneficiary
23 other than the estate of the insured, or under any accident or
24 health insurance policy shall be exempt from attachment,
25 garnishment, or other legal or equitable process and from all
26 claims of creditors of the insured and of the beneficiary if
27 related to the insured by blood or marriage, unless a written

1 assignment to the contrary has been obtained by the claimant.
2 ~~(b) This subsection shall not apply to an individual's~~
3 ~~aggregate interests greater than ten thousand dollars on all loan~~
4 ~~values or cash values of all matured or unmatured life insurance~~
5 ~~contracts or to all proceeds, cash values, or benefits accruing~~
6 ~~under all annuity contracts owned by such individual.~~
7 ~~Notwithstanding anything in this subdivision to the contrary, the~~
8 ~~aggregate exemptions any person may claim under subdivision (1)(b)~~
9 ~~of section 44-371 and this subdivision shall not exceed ten~~
10 ~~thousand dollars.~~

11 ~~(c) No fraternal benefit society shall be liable or~~
12 ~~responsible to any person to determine or ascertain the aggregate~~
13 ~~total of policy or certificate of life insurance or annuity~~
14 ~~contract loan values, cash values, proceeds, or benefits for any~~
15 ~~policy or certificate owner or annuitant.~~

16 (3) Notwithstanding subsection (2) of this section, an
17 individual's interest in all loan values or cash values of all
18 matured or unmatured life insurance contracts or policies and in
19 all proceeds, cash values, or benefits accruing under all annuity
20 contracts owned by such individual shall not be exempt from
21 attachment, garnishment, or other legal or equitable process or
22 from any other claims of creditors of the insured and of the
23 beneficiary if related to the insured by blood or marriage, to the
24 extent that the loan value or cash value of any matured or
25 unmatured life insurance contract or the proceeds, cash values, or
26 benefits accruing under any annuity contract was established or
27 increased through contributions, premiums, or any other payments
1 made within three years prior to bankruptcy or within three years
2 prior to entry against the individual of a money judgment which
3 thereafter becomes final. A fraternal benefit society shall not be
4 liable or responsible to any person to determine or ascertain the
5 existence or identity of any such creditors prior to payment of any
6 such loan values, cash values, proceeds, or benefits.

7 (4) Notwithstanding subsection (2) of this section,
8 proceeds, cash values, and benefits accruing under any annuity
9 contract or under any policy or certificate of life insurance
10 payable upon the death of the insured to a beneficiary other than
11 the estate of the insured shall not be exempt from attachment,
12 garnishment, or other legal or equitable process by a judgment
13 creditor of the beneficiary if the judgment against the beneficiary
14 was based on, arose from, or was related to an act, transaction, or
15 course of conduct for which the beneficiary has been convicted by
16 any court of a crime punishable only by life imprisonment or death.
17 No fraternal benefit society shall be liable or responsible to any
18 person to determine or ascertain the existence or identity of any
19 such judgment creditor prior to payment of any such proceeds, cash
20 values, or benefits. This subsection shall apply to any judgment
21 rendered on or after January 1, 1995, irrespective of when the
22 criminal conviction is or was rendered and irrespective of whether

- 23 proceedings for attachment, garnishment, or other legal or
24 equitable process were pending on March 14, 1997.".
25 2. On page 20, line 6, after "sections" insert
26 "44-371,"; and in line 7 after the second comma insert "44-1089,".
27 3. Renumber the remaining sections accordingly.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Atkins, Sallie - Nebraska State Fair Board - Agriculture

Bleich, Christine - State Emergency Response Commission - Government,
Military and Veterans Affairs

Christensen, Richard - State Emergency Response Commission -
Government, Military and Veterans Affairs

Wood, Steven - State Emergency Response Commission - Government,
Military and Veterans Affairs

(Signed) Pat Engel, Chairperson
Legislative Council, Executive Board

RESOLUTION

LEGISLATIVE RESOLUTION 231. Introduced by Dw. Pedersen, 39.

WHEREAS, Mr. Arthur L. Taylor, a retired bill room clerk, died January 24, 2004; and

WHEREAS, Mr. Taylor was born August 10, 1924, in Beacon Falls, Connecticut. He graduated from the University of Nebraska, was a veteran of World War II, and was an accountant for Aquila. He started working in the bill room in 1989; and

WHEREAS, in his spare time, Mr. Taylor was an avid Cornhusker fan, was active in Northeast United Church of Christ (he was the church financial secretary for fifty years), was commander of VFW Post 3606, and was a member of Delta Sigma Pi fraternity; and

WHEREAS, Arthur Taylor was a quiet gentleman who was always kind, considerate, polite, and dependable and will be greatly missed by his fellow employees.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature sends its condolences to the family of Arthur L. Taylor.

2. That a copy of this resolution be sent to Mr. Taylor's wife, Virginia E. Taylor.

Laid over.

ANNOUNCEMENT

Senator McDonald designates LB 986 as her priority bill.

NOTICE OF COMMITTEE HEARINGS**Business and Labor**

Room 1525

| | | |
|---------|--------------------------|-----------|
| LB 930 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 976 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 977 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 981 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 982 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 985 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 1127 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 1062 | Monday, February 9, 2004 | 1:30 p.m. |

(Signed) Floyd P. Vrtiska, Chairperson

Urban Affairs

Room 1510

| | | |
|---------|----------------------------|-----------|
| LB 1052 | Tuesday, February 10, 2004 | 1:30 p.m. |
| LB 1175 | Tuesday, February 10, 2004 | 1:30 p.m. |
| LB 1171 | Tuesday, February 10, 2004 | 1:30 p.m. |
| LB 1233 | Tuesday, February 10, 2004 | 1:30 p.m. |
| LB 1246 | Tuesday, February 17, 2004 | 1:30 p.m. |
| LB 1148 | Tuesday, February 17, 2004 | 1:30 p.m. |

(Signed) D. Paul Hartnett, Chairperson

SELECT FILE

LEGISLATIVE BILL 172. The Schimek pending amendment, AM2361, found on page 459, was renewed.

Senator Chambers offered the following amendment to the Schimek pending amendment:

FA1440

Amend AM2361

In line 6 strike "for" and insert "to"**SENATOR WEHRBEIN PRESIDING**

Senator Chambers moved for a call of the house. The motion prevailed with 20 ayes, 2 nays, and 27 not voting.

The Chambers amendment lost with 12 ayes, 17 nays, 11 present and not

voting, and 9 excused and not voting.

The Chair declared the call raised.

The Schimek pending amendment, AM2361, found on page 459 and considered in this day's Journal, was renewed.

Senator Chambers moved for a call of the house. The motion prevailed with 28 ayes, 2 nays, and 19 not voting.

The Schimek amendment lost with 14 ayes, 22 nays, 5 present and not voting, and 8 excused and not voting.

The Chair declared the call raised.

Pending.

NOTICE OF COMMITTEE HEARINGS

General Affairs

Room 1510

| | |
|---|-----------|
| Monday, February 9, 2004 | 1:30 p.m. |
| John Atherton - Nebraska Advisory Commission on Compulsive Gambling | |
| William King - State Electrical Board | |
| George Morrissey - State Electrical Board | |
| Tom Ourada - State Electrical Board | |

| | | |
|---------|--------------------------|-----------|
| LB 995 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 1174 | Monday, February 9, 2004 | 1:30 p.m. |
| LB 1196 | Monday, February 9, 2004 | 1:30 p.m. |

(Signed) Ray Janssen, Chairperson

Revenue

Room 1524

| | | |
|----------|------------------------------|-----------|
| LB 1193 | Wednesday, February 18, 2004 | 1:30 p.m. |
| LB 1227 | Wednesday, February 18, 2004 | 1:30 p.m. |
| LR 224CA | Wednesday, February 18, 2004 | 1:30 p.m. |
| LB 1128 | Wednesday, February 18, 2004 | 1:30 p.m. |
| LB 1224 | Wednesday, February 18, 2004 | 1:30 p.m. |
| | | |
| LB 1160 | Thursday, February 19, 2004 | 1:30 p.m. |
| LB 1230 | Thursday, February 19, 2004 | 1:30 p.m. |
| LB 1133 | Thursday, February 19, 2004 | 1:30 p.m. |
| LB 1102 | Thursday, February 19, 2004 | 1:30 p.m. |
| LB 1018 | Thursday, February 19, 2004 | 1:30 p.m. |
| LB 905 | Thursday, February 19, 2004 | 1:30 p.m. |

| | | |
|----------|---------------------------|-----------|
| LB 922 | Friday, February 20, 2004 | 1:30 p.m. |
| LB 935 | Friday, February 20, 2004 | 1:30 p.m. |
| LR 228CA | Friday, February 20, 2004 | 1:30 p.m. |
| LB 965 | Friday, February 20, 2004 | 1:30 p.m. |

(Signed) David Landis, Chairperson

AMENDMENTS - Print in Journal

Senator Beutler filed the following amendment to LB 155:
AM2400

(Amendments to Standing Committee amendments, AM0322)

- 1 1. On page 1, line 4, after the comma insert "none of
- 2 whom reside on the leased premises.".

Senator Jones filed the following amendment to LB 279A:
AM2408

- 1 1. On page 2, line 12, strike "July 1" and insert "July
- 2 19".

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 100A. Introduced by Baker, 44.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 100, Ninety-eighth Legislature, Second Session, 2004.

UNANIMOUS CONSENT - Add Cointroducer

Senator McDonald asked unanimous consent to have her name added as cointroducer to LBs 986 and 1190. No objections. So ordered.

ADJOURNMENT

At 11:57 a.m., on a motion by Senator Janssen, the Legislature adjourned until 9:00 a.m., Tuesday, February 3, 2004.

Patrick J. O'Donnell
Clerk of the Legislature

